



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

May 11, 1992

Ms. Phoebe Knauer
Director, Information Release
Texas Employment Commission
101 East 15th Street
Austin, Texas 78778

OR92-201

Dear Ms. Knauer:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, article 6252-17a, V.T.C.S. Your request was assigned ID# 14849.

The Texas Employment Commission ("TEC") received a request for information concerning TEC determinations about the status of employers as employee leasing companies. You released numerous documents in response to that request. The requestor then requested the following information:

1. the tax determinations made under Rule 33 referred to in a September 14, 1990, memo from "Duhon, Legal," and any Rule 33 determinations issued subsequent to that memo;
2. the attachment to the September 14, 1990, memo from "Duhon, Legal," which contains a list of staff leasing companies for which TEC tax examiners have issued Rule 33 determinations (Exhibit G);
3. the memo dated October 7, 1991, from "Tax, McCorkle," which contains a list of staff leasing companies for which TEC tax examiners have issued Rule 33 determinations (Exhibit H); and

4. all TEC decisions concerning employer status under Rule 13 or Rule 33.

You say you have released the Rule 13 decisions of the Commission which apply Rule 33. You also released the memo dated October 7, 1991, but with the name and account number of each staff leasing company deleted. You have sent for our inspection representative samples of Rule 33 decision letters, copies of the lists referred to above, as well as a memo, dated January 29, 1992, which contains a recent list of staff leasing companies involved in completed Rule 33 investigations. Thus, we will decide whether you must release: 1) the name and account number of each company on the lists of staff leasing companies for which the tax examiners have made Rule 33 determinations, and 2) the Rule 33 determinations themselves.

You urge that the requested information is made confidential by article 5221b-9(g), V.T.C.S., which provides in pertinent part:

Information thus obtained or otherwise secured shall not be published or be open to public inspection (other than to public employees in the performance of their public duties) except as the Commission may deem necessary for the proper administration of this Act.

This office has recently concluded that the confidentiality of this provision extends to all information on reports or records TEC obtains from an employer. Open Records Decision No. 599 (1992). The Rule 33 determinations reveal information the company under investigation supplied to the TEC. The name of a company for which a Rule 33 determination has been made is likewise information TEC obtains from an employer. In our opinion, therefore, such information may be withheld pursuant to article 5221b-9(g). However, for the purpose of permitting public scrutiny of the actions of TEC tax examiners, you offer to release an edited version of the Rule 33 determinations, deleting the names and addresses of the leasing companies, the client companies, and any other identifying information. Because article 5221b-9(g) gives the TEC the discretion to determine whether the release of information it obtains is necessary for the proper administration of the Act, we conclude that you may release the edited versions of the Rule 33 determinations, as well as the lists with the company names deleted. You must also delete the company account numbers on the lists, as they are made confidential by federal regulations. Open Records Decision No. 599, at 5-6.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please refer to OR92-201.

Yours very truly,

A handwritten signature in cursive script, appearing to read "Kay Guajardo", with a long horizontal flourish extending to the right.

Kay Guajardo
Assistant Attorney General
Opinion Committee

cc: Mr. Robert C. Rice
Attorney at Law
P.O. Box 1947
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